HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 203 Growth Management
SPONSOR(S): Commerce Committee, Local, Federal & Veterans Affairs Subcommittee, McClain and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	9 Y, 5 N, As CS	Rivera	Miller
2) Commerce Committee	16 Y, 6 N, As CS	Wright	Hamon
3) State Affairs Committee		Rivera	Williamson

SUMMARY ANALYSIS

In order to manage growth in Florida, certain statutory procedures and requirements have been put in place for state agencies and local governments to follow and enforce.

The bill makes the following changes to growth management regulations:

- Requires a local comprehensive plan to have a property rights element, which requires the local government to consider certain private property rights in its decision-making process. Local governments must adopt this element during their next plan amendment process, or by July 1, 2023.
- Provides that all municipal comprehensive plans effective, rather than adopted, after January 1, 2019, must incorporate development orders existing before the plan's effective date.
- Provides that a developer and the local government are authorized to amend or cancel a development agreement without securing the consent of other parcel owners of property, unless such amendment or cancellation directly modifies the allowable uses or entitlements of an owner's property.
- Prohibits a municipality from annexing an area within another municipality's jurisdiction without the other municipality's consent, unless an interlocal agreement provides for a different process.
- Allows agreements pertaining to existing developments of regional impact that are classified as essentially built out, which agreements were valid on or before April 6, 2018, to be amended including amendments exchanging land uses under certain circumstances.
- Provides that a municipality may not extend new water or sewer services into the unincorporated area of a county, without consent of the county, if the county already provides the same service, on or after July 1, 2020.
- Requires that all utility permit applications for use of the public right-of-way be processed within the timeframes currently applicable only to permit applications submitted by communications services providers.
- Requires the Department of Economic Opportunity to give preference to counties with populations less than 200,000, and their municipalities, when selecting applications to fund technical assistance related to certain determinations pertaining to multi-use corridors, including necessary changes or updates to a local government's comprehensive plan.
- Allows the prevailing party in a challenge to certain local ordinances for local growth policy and land development regulation to seek attorney fees and costs.

The bill may have a minimal, negative fiscal impact on state government, and an indeterminate, negative fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Local Comprehensive Plans

Background

Private Property Rights

The "Bert Harris Jr., Private Property Rights Protection Act" (Harris Act) entitles private property owners to relief when a specific action of a governmental entity inordinately burdens the owner's existing use, or a vested right to a specific use, of real property.[1] The Harris Act recognizes that the inordinate burden, restriction, or limitation on private property rights as applied may fall short of a taking under the Florida Constitution or the United States Constitution and establishes a separate and distinct cause of action for relief, or payment of compensation, when a new law, rule, or ordinance of the state or a political entity in the state unfairly affects real property.[2] The Harris Act applies generally to state and local governments but not to the U.S. government, federal agencies, or state or local government entities exercising formally delegated federal powers.[3]

In addition to action inordinately burdening a property right, an owner may seek relief when a state or local governmental entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.[4] A prohibited exaction occurs when an imposed condition lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.[5]

The "Florida Land Use and Environmental Dispute Resolution Act" provides a non-judicial alternative dispute resolution process for a landowner to request relief from a government entity's development order or enforcement action when the order or action allegedly is unreasonable or unfairly burdens the use of the owner's real property.[6] Parties in pending judicial proceedings may agree to use this process if the court approves.[7]

State and Local Comprehensive Plans

Laws protecting private property rights are balanced against the state's need to effectively and efficiently plan, coordinate, and deliver government services amid the state's continued growth and development.[8] The State Comprehensive Plan provides long-range policy guidance for the orderly management of state growth,[9] which must be consistent with the protection of private property rights.[10] Local governments are required to adopt local comprehensive plans to manage the future growth of their communities.[11]

First adopted in 1975[12] and extensively expanded in 1985,[13] Florida's laws on comprehensive land planning were significantly revised in 2011, becoming the Community Planning Act.[14] The Community

[1] S. 70.001(2), F.S.
[2] S. 70.001(1), F.S.
[3] S. 70.001(3)(c), F.S.
[4] S. 70.45(2), F.S.
[5] S. 70.45(1)(c), F.S.
[6] S. 70.51, F.S.
[7] S. 70.51(29), F.S.
[8] *See* s. 186.002(1)(b), F.S.
[9] S. 187.101(1), F.S.
[10] S. 187.101(3), F.S. The plan's goals and policies must also be reasonably applied where they are economically and environmentally feasible and not contrary to the public interest.
[11] S. 163.3167(2), F.S.
[12] *See* ch. 75-257, Laws of Fla.
[13] *See* ch. 85-55, Laws of Fla.
[14] *See* ch. 2011-139, s. 17, Laws of Fla.

Planning Act directs how local governments create and adopt their local comprehensive plans. All governmental entities in the state must recognize and respect judicially acknowledged or constitutionally protected private property rights, exercising their authority without unduly restricting private property rights, leaving property owners free from actions by others that would harm their property or constitute an inordinate burden on property rights under the Harris Act.[15]

Local Comprehensive Plan Elements

Local comprehensive plans must include principles, guidelines, standards, and strategies for orderly and balanced future land development. Plans must reflect community commitments to implement the plan[16] and identify procedures for monitoring, evaluating, and appraising its implementation.[17] Plans may include optional elements,[18] but must include the following nine elements:

- Capital improvements;[19]
- Future land use plan;[20]
- Intergovernmental coordination;[21]
- Conservation;[22]
- Transportation;[23]
- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;[24]
- Recreation and open space;[25]
- Housing;[26] and
- Coastal management (for coastal local governments).[27]

Counties and municipalities may employ individual comprehensive plans or joint plans if both entities agree. Alternatively, they may coordinate plans in any combined manner that aligns with their common interests.[28] A county plan controls in a municipality until a municipal comprehensive plan is adopted. New municipalities must adopt a comprehensive plan within three years after the date of incorporation.[29]

Amendments to a Local Comprehensive Plan

Local governments must review and amend their comprehensive plans every seven years to reflect any changes in state requirements.[30] Within a year of any such amendments, local governments must adopt or amend local land use regulations consistent with the amended plan.[31] A local government is not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.[32]

Generally, a local government amending its comprehensive plan must follow an expedited state review process.[33] Certain plan amendments, including amendments required to reflect a change in state requirements, must follow the state coordinated review process for the adoption of comprehensive

[15] S. 163.3161(10), F.S.
[16] S. 163.3177(1), F.S.
[17] S. 163.3177(1)(d), F.S.
[18] S. 163.3177(1)(a), F.S.
[19] S. 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.
[20] S. 163.3177(6)(a), F.S.
[21] S. 163.3177(6)(h), F.S.
[22] S. 163.3177(6)(d), F.S.
[23] S. 163.3177(6)(b), F.S.
[24] S. 163.3177(6)(c), F.S.
[25] S. 163.3177(6)(e), F.S.
[26] S. 163.3177(6)(f), F.S.
[27] S. 163.3177(6)(g), F.S.
[28] S. 163.3167(1), F.S.
[29] S. 163.3167(3), F.S.
[30] S. 163.3191, F.S.
[31] S. 163.3203, F.S.
[32] S. 163.3161(12), F.S.
[33] S. 163.3184(3)(a), F.S.

plans.[34] Under the state process, the state land planning agency is responsible for plan review, coordination, and preparing and transmitting comments to the local government.[35] The Department of Economic Opportunity (DEO) is designated as the state land planning agency.[36]

Under the state coordinated review process, local governments must hold a properly noticed public hearing[37] about the proposed amendment before sending it for comment from several reviewing agencies, including DEO, the Department of Environmental Protection, the appropriate regional planning council, and the Department of State.[38] Local governments or government agencies within the state filing a written request with the governing body are also entitled to copies of the amendment.[39] Comments on the amendment must be received within 30 days after DEO receives the proposed plan amendment.[40]

DEO must provide a written report within 60 days of receipt of the proposed amendment if it elects to review the amendment.[41] The report must state the agency's objections, recommendations, and comments with certain specificity, and must be based on written, not oral, comments.[42] Within 180 days of receiving the report from DEO, the local government must review the report and any written comments and hold a second properly noticed public hearing on the adoption of the amendment.[43] Adopted plan amendments must be sent to DEO and any agency or government that provided timely comments within 10 working days after the hearing.[44]

After receiving the adopted amendment and determining it is complete, DEO has 45 days to determine if the adopted plan amendment complies with the law[45] and to issue on its website a notice of intent finding whether or not the amendment is compliant.[46] A compliance review is limited to the findings identified in DEO's original report unless the adopted amendment is substantially different from the reviewed amendment.[47] Unless challenged, a local comprehensive plan amendment takes effect pursuant to the notice of intent.[48] If there is a timely filed challenge, then the plan amendment will not take effect until DEO or the Administration Commission enters a final order determining the adopted amendment complies with the law.[49]

Requirements for Local Land Development Regulations and Comprehensive Plans

Section 163.3202(2), F.S., outlines the minimum provisions that counties and municipalities should include in their local government land development regulations. These provisions include:

- Regulating the subdivision of land;
- Regulating the use of land and water;
- Providing for protection of potable water wellfields;
- Regulating areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensuring the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulating signage;

[34] S. 163.3184(2)(c), F.S.
[35] S. 163.3184(4)(a), F.S.
[36] S. 163.3164(44), F.S.
[37] S. 163.3184(4)(b) and (11)(b)1., F.S.
[38] S. 163.3184(4)(b) and (c), F.S.
[39] S. 163.3184(4)(b), F.S.
[40] S. 163.3184(4)(c), F.S.
[41] S. 163.3184(4)(d)1., F.S.
[42] S. 163.3184(4)(d)1., F.S. All written communication the agency received or generated regarding a proposed amendment must be identified with enough information to allow for copies of documents to be requested. S. 163.3184(4)(d)2., F.S.
[43] S. 163.3184(4)(e)1. and (11)(b)2., F.S. If the hearing is not held within 180 days of receipt of the report, the amendment is deemed withdrawn absent an agreement and notice to DEO and all affected persons that provided comments. S. 163.3184(4)(e)1., F.S.
[44] S. 163.3184(4)(e)2., F.S.
[45] S. 163.3184(4)(e)3. and 4., F.S.
[46] S. 163.3184(4)(e)4., F.S.
[47] *Id*.
[48] S. 163.3184(4)(e)5., F.S.
[49] *Id*.

- Addressing concurrency;
- Ensuring safe and convenient onsite traffic flow; and
- Maintaining the existing density of residential properties or recreational vehicle parks.

Local comprehensive plans adopted after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the comprehensive plan's effective date. The plan may not impair a party's ability to complete development in accordance with the development order and must vest the density[50] and intensity[51] approved by the development order without any limitations or modifications. Land development regulations must incorporate preexisting development orders.[52]

Effect of Proposed Changes

The bill requires local governments to include a property rights element in their comprehensive plans at their next proposed plan amendment or by July 1, 2023, whichever comes first. The bill provides that a local government may develop its own property rights language if such language does not conflict with the model statement of rights. The model statement of rights requires the local government to consider the following four elements in local decision-making:

- Physical possession and control of the property owner's interests in the property, including easements, leases, or mineral rights;
- Use, maintenance, development, and improvement of the property for personal use or the use of any other person, subject to state law and local ordinances;
- Privacy and exclusion of others from the property to protect the owner's possessions and property; and
- Disposal of the property owner's property through sale or gift.

The bill provides that all local comprehensive plans effective, rather than adopted, after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the plan's effective date.

Local Government Development Agreements

Background

Local governments may enter into development agreements with developers.[53] A "development agreement" is a "contract between a local government and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits."[54]

Any local government may, by ordinance, establish procedures and requirements to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.[55] A development agreement must include the following:[56]

- A legal description of the land subject to the agreement and the names of its legal and equitable owners;
- The duration of the agreement;
- The development uses permitted on the land, including population densities, and building intensities and height;

[50] S. 163.3164(12), F.S., defines the term "density" as an objective measure of the number of people or residential units allowed per unit of land, such as residents or employees per acre.
[51] S. 163.3164(22), F.S., defines the term "intensity" as an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below the ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services.
[52] Ss. 163.3167(3) and 163.3203, F.S.
[53] S. 163.3220(4), F.S. *See* ss. 163.3220-163.3243, F.S., known as the "Florida Local Government Development Agreement Act."
[54] *Morgran Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[55] S. 163.3223, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[56] S. 163.3227(1), F.S.

- A description of public facilities that will service the development, including who will provide such facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development;
- A description of any reservation or dedication of land for public purposes;
- A description of all local development permits approved or needed to be approved for the development of the land;
- A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;
- A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
- A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.

A development agreement may also provide that the entire development, or any phase, must be commenced or completed within a specific time.[57] Within 14 days after a local government enters into a development agreement, the local government must record the agreement with the clerk of the circuit court in the county where the local government is located. A development agreement will not be effective until properly recorded in the public records of the county.[58]

The requirements and benefits in a development agreement are binding upon and vest or continue with any person who later obtains ownership from one of the original parties to the agreement,[59] also known as a successor in interest.[60] A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.[61]

Effect of Proposed Changes

The bill provides that a party or its designated successor in interest to a development agreement and the local government are authorized to amend or cancel a development agreement without securing the consent of other parcel owners of property that were originally subject to the development agreement unless the amendment, modification or termination directly modifies the allowable uses or entitlements of an owner's property.

Municipal Annexation

Background

Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities must be completed as provided by general or special law.[62] The Legislature established local annexation procedures by general law in 1974 with the "Municipal Annexation or Contraction Act."[63] The act provides how property may be annexed or de-annexed by municipalities without legislative action. The purpose of the act is to:

- Ensure sound urban development and accommodation to growth;
- Establish uniform legislative standards for the adjustment of municipal boundaries;
- Ensure efficient provision of urban services to areas that become urban in character; and
- Ensure areas are not annexed unless municipal services can be provided to those areas.[64]

Before local annexation procedures may begin, the governing body of the municipality must prepare a

[57] S. 163.3227(2), F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[58] S. 163.3239, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[59] S. 163.3239, F.S.
[60] A successor in interest is one who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance. Black's Law Dictionary 1473 (8th ed. 2004).
[61] S. 163.3237, F.S.
[62] Art. VIII, s. 2(c), Fla. Const.
[63] Ch. 171, F.S. *See* ch. 74-190, s. 1, Laws of Fla., the "Municipal Annexation or Contraction Act."
[64] S. 171.021, F.S.

report containing plans for providing urban services to any area to be annexed.[65] A copy of the report must be filed with the board of county commissioners where the municipality is located.[66] This report must include appropriate maps, plans for extending municipal services, timetables, and financing methodologies. The report must certify the subject area is appropriate for annexation because it meets the following standards and requirements:[67]

- The area to be annexed must be contiguous to the boundary of the annexing municipality.[68]
- The area to be annexed must be reasonably compact.[69]
- No part of the area to be annexed may fall within the boundary of another incorporated municipality.
- Part or all of the land to be annexed must be developed for urban purposes.[70]
- Alternatively, if the proposed area is not developed for urban purposes, it must either border at least 60 percent of a developed area or provide a necessary bridge between two urban areas for the extension of municipal services.[71]

The Interlocal Service Boundary Agreement Act (Interlocal Boundary Act)[72] authorizes an alternative to these statutory procedures. Intended to encourage intergovernmental coordination in planning, delivery of services, and boundary adjustments, the primary purpose of the Interlocal Boundary Act is to reduce the costs of local governments, prevent duplication of services, increase local government transparency and accountability, and reduce intergovernmental conflicts.[73]

An interlocal agreement may provide an annexation procedure with a flexible process for securing the consent of those within the area to be annexed, while continuing the requirement for approval of the proposed annexation by a majority of the registered voters, the landowners, or both, within the proposed annexation area. The alternate process also must provide for certain disclosures pertaining to a privately owned solid waste disposal facility located within the proposed annexation area, including whether the owner of the facility objects to the proposed annexation.[74]

Effect of Proposed Changes

The bill prohibits a municipality from annexing an area within another municipality's jurisdiction without the other municipality's consent.

The bill provides an exception to these annexation requirements when an interlocal agreement is in effect for property annexed by a municipality.

Developments of Regional Impact

Background

[65] S. 171.042(1), F.S.
[66] S. 171.042(2), F.S.
[67] S. 171.042(1)(a)-(c), F.S.
[68] "Contiguous" means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. There are specified exceptions for cases in which an area is separated from the city's boundary by a publicly owned county park, right-of-way, or body of water. *See* s. 171.031(11), F.S.
[69] S. 171.031(12), F.S., defines the term "compactness" as concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state is required to be designed in such a manner as to ensure that the area will be reasonably compact.
[70] An area developed for urban purposes is defined as one that meets any one of the following standards: (a) a total resident population equal to at least two persons per acre; (b) a total resident population equal to at least one person per acre, with at least 60 percent of subdivided lots one acre or less; or (c) at least 60 percent of the total lots used for urban purposes, with at least 60 percent of the total urban residential acreage divided into lots of five acres or less. S. 171.043(2), F.S.
[71] S. 171.043, F.S.
[72] Ch. 171, Part II, F.S. *See* s. 171.20, F.S.
[73] S. 171.201, F.S.
[74] S. 171.205, F.S.

A Development of Regional Impact (DRI) is "any development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county."[75]

The DRI statutes were created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting laws.[76] The program provided a process to identify regional impacts stemming from large developments and appropriate provisions to mitigate impacts on state and regional resources.[77]

The process to review or amend a DRI agreement and its implementing development orders went through several revisions[78] until repeal of the requirements for state and regional reviews in 2018.[79] Local governments, where a DRI is located, are responsible for implementing and amending existing DRI agreements and development orders.[80]

Currently, an amendment to a development order for an approved DRI may not amend to an earlier date the date to which the local government had agreed not to impose downzoning, unit density reduction, or intensity reduction, unless:[81]

- The local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred;
- The development order was based on substantially inaccurate information provided by the developer; or
- The change is clearly established by local government to be essential to the public health, safety, or welfare.

Any proposed change to a previously approved DRI must be reviewed by the local government based on the standards and procedures in its adopted local comprehensive plan and local land development regulations.[82] A proposed change reducing the originally approved height, density, or intensity of the development must be reviewed by the local government based on the standards in the local comprehensive plan at the time the development was originally approved. If the proposed change would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change.[83]

DRI agreements classified as essentially built out and valid on or before April 6, 2018, were preserved, but the provisions that allowed such agreements to be amended to exchange approved land uses were eliminated.[84]

For such agreements, a DRI is essentially built out if:[85]

- All the mitigation requirements in the development order were satisfied, all developers were in compliance with all applicable terms and conditions of the development order except the buildout date, and the amount of proposed development that remained to be built was less than 40 percent of any applicable development-of-regional-impact threshold; or

[75] S. 380.06(1), F.S.
[76] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in *Growth Management in Florida: Planning for Paradise*, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T. Higgins eds. 2005).
[77] Ch. 72-317, s. 6, Laws of Fla.
[78] *See* ch. 2015-30, Laws of Fla. (requiring that new DRI-sized developments proposed after July 1, 2015, must be approved by a comprehensive plan amendment in lieu of the state review process provided for in s. 380.06, F.S.) and ch. 2016-148, Laws of Fla. (requiring DRI reviews to follow the state coordinated review process if the development, or an amendment to the development, required an amendment to the comprehensive plan).
[79] Ch. 2018-158, Laws of Fla.
[80] S. 380.06(4)(a) and (7), F.S.
[81] S. 380.06(4)(a), F.S.
[82] S. 380.06(7)(a), F.S. These procedures must include notice to the applicant and public about the issuance of development orders.
[83] *Id*.
[84] Ch. 2018-158, s. 1, Laws of Fla.
[85] S. 380.06(15)(g)3. and 4., F.S. (2017).

- The project was determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government.

Effect of Proposed Changes

The bill authorizes the amendment of any DRI agreement previously classified as (or officially determined to be) essentially built out, and entered into on or before April 6, 2018, including amendments authorizing the developer to exchange approved land uses. Subject to the developer demonstrating that the exchange will not increase impacts to public facilities, amendments are made pursuant to the processes adopted by the local government for amending development orders.

Technical Assistance Funding

Background

DEO, as the state land planning agency, must assist communities to find creative solutions fostering vibrant, healthy communities and by providing direct and indirect technical assistance within available resources.[86] To carry out this charge, the Bureau of Community Planning and Growth within DEO manages the Community Planning Technical Assistance Grant Program.[87]

Under the program, DEO awards grants to counties, cities, and regional planning councils to assist local governments in developing economic development strategies, meeting the requirements of the Community Planning Act, addressing critical local planning issues, and promoting innovative planning solutions to challenges identified by local government applicants. The program has funded a wide range of activities, including the development and revision of comprehensive plan amendments, economic development strategic plans, affordable housing action plans, downtown master plans, transportation master plans, and revitalization plans.[88]

Beginning in fiscal year (FY) 2011-2012, the Legislature appropriated funds for DEO to implement the program. From FY 2015-2016 to FY 2019-2020, DEO expended almost $6 million on 174 approved grant projects.[89]

M-CORES Program

Enacted during the 2019 Regular Session,[90] the Multi-use Corridors of Regional Economic Significance (M-CORES) Program is designed to advance the construction of regional corridors that will accommodate multiple modes of transportation and multiple types of infrastructure.[91] The specific purpose of the program is to revitalize rural communities, encourage job creation in those communities, and provide regional connectivity while leveraging technology, enhancing the quality of life and public safety, and protecting the environment and natural resources.[92]

The intended benefits to be provided through the M-CORES Program include, but are not limited to:
- Hurricane evacuation;
- Congestion mitigation;
- Trade and logistics;
- Broadband, water, and sewer connectivity;
- Energy distribution;

[86] S. 163.3168(3), F.S.
[87] DEO, Division of Community Planning, *Technical Assistance*, available at http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/technical-assistance (last visited Feb. 18, 2020).
[88] *Id.*
[89] *See* email and email attachment from Eva Davis, Senate Judiciary Committee, "DEO Information on SB 410 (footnote 2).pdf" (Feb. 17, 2020) (on file with House State Affairs Committee).
[90] Ch. 2019-43, Laws of Fla.
[91] *See* FDOT, https://floridamcores.com/ (last visited Feb. 17, 2020).
[92] S. 338.2278(1), F.S.

- Autonomous, connected, shared, and electric vehicle technology;
- Other transportation modes, such as shared-use nonmotorized trails, freight and passenger rail, and public transit;
- Mobility as a service;
- Availability of a trained workforce skilled in traditional and emerging technologies;
- Protection or enhancement of wildlife corridors or environmentally sensitive areas; and
- Protection or enhancement of primary springs protection zones and farmland preservation areas.[93]

The following three corridors comprise the M-CORES Program:
- Southwest-Central Florida Connector (Collier County to Polk County);
- Suncoast Connector (Citrus County to Jefferson County); and
- Northern Turnpike Connector (the northern terminus of the Florida Turnpike northwest to the Suncoast Parkway).[94]

As required by the law, the Florida Department of Transportation (FDOT) assembled three task forces to study the three specific multi-use corridors.[95] The task forces will make recommendations to FDOT regarding the potential economic and environmental impacts of the corridor and other factors as specified in the M-CORES legislation to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2020.[96] FDOT must provide local governments affected by the report with a copy and project alignments,[97] and each local government with an interchange[98] within its jurisdiction must review its comprehensive plan by December 23, 2023. The review must consider whether the area around the interchange contains appropriate land uses and natural resource protections and whether the plan should be amended to provide appropriate uses and protections.[99] The law requires, to the maximum extent feasible, project construction to begin no later than December 31, 2022, with projects open to traffic no later than December 31, 2030.[100]

Effect of Proposed Changes

The bill requires DEO, when selecting applications for Community Planning Technical Assistance Grants, to give preference to counties with a population of 200,000 or less, and municipalities within such counties, for assistance in:
- Determining whether an area in and around a proposed multiuse corridor interchange contains appropriate land uses and natural resource protection; and
- Developing or amending a local government's comprehensive plan to provide for the land uses, natural resource protection, and intended benefits associated with a proposed multiuse corridor interchange.

Municipal Water and Wastewater Service in Unincorporated Areas

Background

[93] S. 338.2278(1)(a)-(k), F.S.
[94] S. 338.2278(2)(a)-(c), F.S.
[95] S. 338.2278(3)(c)1., F.S.
[96] S. 338.2278(3)(c)9., F.S.
[97] Project Alignment is the process of developing a common understanding among the key stakeholders of the purpose and goals of the project and the means and methods of accomplishing those goals. David Wiley, et. al, Project Management for Instructional Designers.553 (4th Ed.), available at https://pm4id.org/back-matter/glossary/ (last visited Feb. 19, 2020).
[98] An interchange is a grade-separated intersection (one road passes over another) with ramps to connect them. *See* FDOT, RCI Features & Characteristics Handbook, available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/statistics/statistics/rci/sections/252--interchanges.pdf?sfvrsn=50a6e807_0 (last visited Feb. 19, 2020).
[99] S. 338.2278(3)(c)10., F.S.
[100] S. 338.2278(6), F.S.

Municipalities are authorized to provide water and sewer utility services.[101] With respect to public works projects, including water and sewer utility services,[102] a municipality may extend and execute its corporate powers outside of the municipal boundary as "desirable or necessary for the promotion of the public health, safety and welfare."[103] A municipality may not extend or apply these corporate powers within the corporate limits of another municipality.[104] However, it may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions.[105]

Effect of Proposed Changes

The bill provides that a municipality may not extend new water or sewer service into the unincorporated area of a county, without the express consent of a majority of the county commissioners given at a duly noticed meeting of the commission, if the county already provides the same service within the county. However, the bill provides that a municipality need not obtain consent to continue to provide water or sewer service within an unincorporated area in which it provided service prior to July 1, 2020.

Utility Right-of-Way Permits

Background

Pursuant to s. 337.401, F.S., FDOT and each local government with jurisdiction and control of public roads or publicly owned rail corridors is authorized to prescribe and enforce reasonable rules or regulations with regard to the placement and maintenance of utility facilities across, on, or within the right-of-way (ROW) limits of any road or publicly owned rail corridor under its jurisdiction. Each of these entities is individually referred to as the "authority" when acting in this capacity. Each authority may authorize any person who is a resident of this state, or any corporation organized or licensed to do business under Florida law, to use a public ROW for a utility[106] in accordance with the authority's rules or regulations. A utility may not be installed, located, or relocated within a public ROW unless authorized by a written permit.[107]

The Advanced Wireless Infrastructure Deployment Act

In 2017, the Legislature established an expedited permitting process for small wireless facilities[108] (SWF) that a wireless provider[109] seeks to place in the public ROW.[110] Under this process, an authority must, within 14 days after receiving an application, determine and notify the applicant, by electric mail, as to whether the application is complete. If it determines the application is incomplete, the authority

[101] Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.
[102] Other public works projects authorized under s. 180.06, F.S., include alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes, garbage collection and disposal, airports, hospitals, jails, golf courses, gas plants and distribution systems, and related facilities.
[103] S. 180.02(2), F.S.
[104] *Id.*
[105] S. 180.19, F.S.
[106] S. 337.401(1)(a), F.S., refers to "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404" as a "utility."
[107] S. 337.401(2), F.S.
[108] "Small wireless facility" means a wireless facility that meets the following qualifications:
- Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

S. 337.401(7)(b)10., F.S.
[109] The term "wireless provider" means a wireless infrastructure provider or a wireless services provider. S. 337.401(7)(b)14., F.S.
[110] Ch. 2017-136, L.O.F., codified in pertinent part at s. 337.401(7)(d)7.-9., F.S.

must specifically identify the missing information. An application is deemed complete if the authority fails to notify the applicant within 14 days.

A completed permit application for a SWF is deemed approved if the authority fails to approve or deny the application within 60 days of receipt. This review period may be extended by mutual agreement. If an application is denied, the applicant may cure the deficiencies and submit a revised application within 30 days after denial. The revised application is deemed approved if the authority does not approve or deny it within 30 days of receipt. If the authority provides for administrative review of its denial of an application, the authority must complete its review and issue a written decision within 45 days of a written request for review.[111] In 2019, this expedited permitting process was expanded to include all communications facilities a provider of communications services[112] seeks to place in the public ROW.[113]

No timeframes are specified in current law for processing permit applications to use the public ROW for any other type of utility.

Effect of Proposed Changes

The bill provides that all permit applications to use the public ROW for any type of utility must be processed within the expedited timeframe that currently applies only to permit applications submitted for communications facilities. Thus, the bill expands application of the expedited permitting process to include public ROW permits for, among other things, electric, natural gas, water, and sewer facilities.

Attorney Fees and Costs for Claims Related to Growth Policy Ordinances

Background

Preemption

The Florida Constitution grants local governments broad home rule authority. Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[114] Non-charter county governments may exercise those powers of self-government that are provided by general or special law.[115] Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide services, and exercise any power for municipal purposes except when expressly prohibited by law.[116] A local government enactment may be considered inconsistent with state law if:

- The State Constitution preempts a subject area;
- The Legislature preempts a subject area; or
- It conflicts with a state statute.

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[117] To expressly preempt a subject area,

[111] S. 337.401(7), F.S.
[112] The term "communications services" means "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added." The term does not include: information services; installation or maintenance of wiring or equipment on a customer's premises; the sale or rental of tangible personal property; the sale of advertising, including, but not limited to, directory advertising; bad check charges; late payment charges; billing and collection services; or Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services. Ss. 337.401(5) and 202.11(1), F.S.
[113] Ch. 2019-131, L.O.F.
[114] Art. VIII, s. 1(g), Fla. Const.
[115] Art. VIII, s. 1(f), Fla. Const.
[116] Art. VIII, s. 2(b), *See also* s. 166.021(1), F.S.
[117] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005).

the Legislature must use clear statutory language stating that intent.[118] Implied preemption occurs when the Legislature has demonstrated an intent to preempt an area, though not expressly. Florida courts find implied preemption when "the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature."[119] Implied preemption is found where the local legislation would present a danger of conflicting with the state's pervasive regulatory scheme.[120]

Where state preemption applies, a local government may not exercise authority in that area.[121] Whether a local government ordinance or other measure violates preemption is ultimately decided by a court. If a local government improperly enacts an ordinance or other measure on a matter preempted to the state, a person may challenge the ordinance by filing a lawsuit. A court ruling against the local government may declare the preempted ordinance void.[122]

Attorney Fees and Costs in Actions Related to Certain Local Government Ordinances

A prevailing party is entitled to attorney fees and costs[123] in an action challenging a local government ordinance when such ordinance is found to be expressly preempted by the Florida Constitution or Florida law.[124]

An award of attorney fees and costs against a local government is prohibited if the local government:[125]

- Receives written notice that an ordinance or proposed ordinance is expressly preempted; and
- Within 30 days of receiving the notice, withdraws a proposed ordinance; or, in the case of an adopted ordinance, notices an intent to repeal the ordinance within 30 days of receiving the notice and repeals the ordinance within 30 days thereafter.

In addition, attorney fees and costs may not be awarded for challenges to ordinances relating to:[126]

- Part II of ch. 163, F.S., for local growth policy and land development regulations;
- Section 553.73, F.S., for the Florida Building Code; or
- Section 633.202, F.S., for the Florida Fire Prevention Code.

The award of attorney fees and costs is supplemental to other available sanctions or remedies.[127]

Effect of Proposed Changes

The bill allows a prevailing party in an action challenging an ordinance related to local growth policy and land development regulations, which is determined or found to be expressly preempted by the Florida Constitution or law, to collect attorney fees and costs under s. 57.112, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 57.112, F.S., allowing attorney fees and costs for prevailing parties in certain growth policy ordinance actions.

Section 2. Amends s. 163.3167, F.S., requiring comprehensive plans initially effective after a certain date to incorporate development orders preexisting the plan.

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[118] *Mulligan*, 934 So. 2d at 1243.
[119] *Tallahassee Mem. Reg. Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).
[120] *Sarasota Alliance for Fair Elections, Inc., v. Browning,* 28 So.3d 880, 886 (Fla. 2010).
[121] Judge James R. Wolf and Sarah Harley Bolinder, The Effectiveness of Home Rule: A Preemptions and Conflict Analysis, 83 Fla. B.J. 92 (June 2009).
[122] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).
[123] The term "attorney fees and costs" includes those reasonable and necessary fees and costs for all preparations, motions, hearings, trails, and appeals. S. 57.112(1), F.S.
[124] S. 57.112, F.S., created in 2019 by ch. 2019-151, Laws of Fla. Attorney fees and costs may be awarded under this section of law in cases commenced on or after July 1, 2019. S. 57.112(6), F.S.
[125] S. 57.112(3), F.S.
[126] S. 57.112(5), F.S.
[127] S. 57.112(4), F.S.

Section 3. Amends s. 163.3168, F.S., requiring DEO to give preference to certain small counties and municipalities for funding and technical assistance.

Section 4. Amends s. 163.3177, F.S., requiring a comprehensive plan to include a private property rights element.

Section 5. Amends s. 163.3237, F.S., authorizing amendment or cancelation of certain development agreements without the consent of certain parties.

Section 6. Amends s. 172.042, F.S., prohibiting a municipality from annexing municipal land without consent of the affected municipality.

Section 7. Amends s. 180.02, F.S., prohibiting municipalities from providing new water and sewer service to certain unincorporated areas without county consent.

Section 8. Amends s. 337.401, F.S., extending local application processing time limits for permits to install certain utilities in a ROW to all utility ROW installation permit applications.

Section 9. Amends s. 380.06, F.S., allowing certain agreements relating to an approved DRI to be amended under certain circumstances.

Section 10. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill provides that all permit applications to use the public ROW for a utility must be processed within the expedited timeframe currently pertaining only to permit applications submitted for communications facilities. Permitting authorities, including FDOT, may need to expend additional resources to satisfy this requirement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an insignificant fiscal impact on local governments not scheduled to review their comprehensive plans before 2024 due to the requirement to amend their plans by July 1, 2023, to include a property rights element; and each local government to amend its comprehensive plan to include development orders existing before the plan's effective date if it does not already do so.

   The bill provides that all permit applications to use the public ROW for a utility must be processed within the expedited timeframe currently pertaining only to permit applications submitted for communications facilities. Permitting authorities, including local governments, may need to expend additional resources to satisfy this requirement. However, the bill does not constrain the ability of local governments to adjust fees as necessary to account for to the potential extra workload.

The bill allows attorney fees and costs to be awarded to a prevailing party in certain challenges to growth policy ordinances. This may cause local governments to be liable for attorney fees and costs in such cases where they are not the prevailing party.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires counties and municipalities that are not scheduled to amend their comprehensive plans before 2024 to amend their plans by July 1, 2023, to include the statement on property rights; requires each county and municipality to amend its comprehensive plan to include development orders existing before the plan's effective date if it does not already do so; and requires local governments to process all utility right-of-way permit applications within a specified time period. However, an exemption may apply given that laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits one municipality from annexing an area within the jurisdiction of another municipality unless that municipality consents. The bill does not specify in what form that consent must be given. The bill also does not address whether a municipality's consent to the annexation of a portion of the area within its jurisdiction may be construed as an exception both to the requirement that the area to be annexed not be within the boundary of another municipality[128] and that a municipality may contract its boundary only from areas that would not meet the criteria for annexation.[129]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2020, the Commerce Committee considered a proposed committee substitute, adopted four amendments, and reported the bill favorably as a committee substitute. The proposed committee substitute added the following provisions to the bill:

- All municipal comprehensive plans effective after January 1, 2019, must incorporate development orders existing before the plan's effective date.
- A developer and the local government are authorized to amend or cancel a development agreement without securing the consent of other property owners unless such amendment or cancellation directly modifies the uses or entitlements of an owner's property.
- A municipality is prohibited from annexing an area within another municipality's jurisdiction without the other municipality's consent, unless an interlocal agreement to the contrary is in effect.
- Existing DRI agreements that are classified as essentially built out and were valid on or before April 6, 2018, may be amended and their land uses exchanged under certain circumstances.

[128] S. 171.043(1), F.S.
[129] S. 171.052(1), F.S.

- DEO must give preference to counties with populations less than 200,000 and their included municipalities seeking funding for certain actions under the M-CORES program when selecting applications for funding for technical assistance.
- On or after July 1, 2020, a municipality may not extend its water or sewer service into the unincorporated area without consent of the county if the county already provides the same service.
- All utility permit applications for use of the public ROW must be processed within the timeframes currently applicable only to permit applications submitted by communications services providers.
- The prevailing party in a claim challenging whether a local growth policy or land development regulation is preempted may seek attorney fees and costs.

Additionally, a provision that required a local comprehensive plan to enumerate a right to quiet enjoyment of property was removed from the bill.

This analysis is drafted to the committee substitute as approved by the Commerce Committee.